Case:11-00735-SEK13 Doc#:36 Filed:06/10/11 Entered:06/10/11 13:11:29 Desc: Main

# IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF PUERTO RICO

IN RE:

JARMIRIAM IRIS BATISTA RODRIGUEZ

CHAPTER

CASE NO.

11-00735 SEK

Debtor(s)

13

BPPR as Servicing agent of Banco de la Vivienda

Movant

11 USC 362 d(1) d(2)

JARMIRIAM IRIS BATISTA RODRIGUEZ and Chapter 13 Trustee, ALEJANDRO OLIVERAS RIVERA

Relief from stay for cause

Respondent(s)

#### **MOTION FOR RELIEF FROM STAY**

#### TO THE HONORABLE COURT:

Comes now, BPPR as Servicing agent of Banco de la Vivienda, secured creditor, represented by the undersigned attorney who respectfully pray and state as follows:

- Jurisdiction over subject matter is predicated on section, 1334 and 157(b) 2(G),
   28 USC.
  - 2. The cause of action is based on section 362 d(1) and d(2), 11 USC.
  - 3. In this case, an Order for Relief was entered on January 31, 2011.
- 4. Movant is the holder in due course of a Mortgage Note, hereinafter the (Note), for \$71,540.00, bearing interest of 6.5%, due on April 01, 2037. Exhibit A-1.
- 5. Since the filing date, debtor account has accumulated **Post Petition** arrears as described in Exhibit (A) of this motion, Verified Statement in compliance with LBR 4001-1(d)(3) and any other arrears that continue to accrued up to the date all post petitions arrears are paid.

Page 2 of 14

Desc: Main

6. Movant argues that considering what is here in above stated, cause exists for granting relief from the stay pursuant to section 362 d(1) d(2), supra, since debtor has failed to make post

petition payments accordingly.

Included as Exhibit (B), is movant Verified Statement regarding the information required by

the Service Member Civil Relief Act of 2003 and a Department of Defense Manpower Data Center

Military Status Report.

7. Said default deprive movant to have its security interest protected as provided under the

Bankruptcy Code.

8. In The event relief from stay is granted movant will initiate or continue mortgage

foreclosure proceedings (in rem) before the local courts and in its consequence the proof of claim

will be withdrawn.

WHEREFORE, movant prays for an Order granting the Relief from Stay as requested.

CERTIFICATE OF ELECTRONIC FILING AND SERVICE

I hereby certify that on this date copy of this motion has been electronically filed with the Clerk of the Court using the CM/ECF system which will sent notification of such filing to debtor(s) attorney and to ALEJANDRO OLIVERAS RIVERA, US Chapter 13 Trustee, and also certify that I have mailed by United State Postal Service copy of this motion to the following non CM/ECF

participant to debtor(s) at theirs address of record in this case.

In San Juan, Puerto Rico, on the 9 day of June, 2011.

CARDONA JIMENEZ LAW OFFICES, PSC

Attorney for BPPR as Servicing agent of Banco de la

Vivienda

PO Box 9023593

San Juan, PR 00902-3593

Tels: (787) 724-1303, Fax No. (787) 724-1369

E-mail: jf@cardonalaw.com

s/José F. Cardona Jiménez, USDC PR 124504

jf@cardonalaw.com

Case:11-00735-SEK13 Doc#:36 Filed:06/10/11 Entered:06/10/11 13:11:29 Desc: Main Document Page 3 of 14

## **BANCO POPULAR DE PUERTO RICO**

## **Request for Legal Action**

EXHIBIT - A

**TO: Cardona - Jimenez Law Office** 

Loan Number: 5942

Debtor: JARMIRIAM BATISTA RODRIGUEZ

Debtor:

BKR #: 11-00735 Date Filed: 01/31/11

Total Payments Due: 28 Pre-Petition: 24 Post-Petition: 4

Post-F	etition	Arrears:
--------	---------	----------

4	Months @	497.00	1,988.00
0	Months @	0.00	0.00
0	Months @	0.00	0.00
4	Late Charges @	13.57	54.28

	SUBTOTAL	\$2,042.28
Attorney Fees		250.00
Inspections		0.00
Filing Fees		150.00
Other Charges		0.00

NOTE:
All reinstallment payments must be made
up to the current month, including legal
fees and late charges.

**TOTAL** \$2,442.28 **DUE DATE:** 03/01/09

PRINCIPAL BALANCE \$68,742.88

Page 4 of 14 Document

Case #: 11-00735 SEK **EXHIBIT A-1** 

VERIFIED STATEMENT

I, José F. Cardona Jiménez, of legal age, single, Attorney for Banco Popular Puerto Rico, and

resident of San Juan, Puerto Rico, declare under penalty of perjury:

1. That I verified the available documents related to all secured claims filed by Banco

Popular Puerto Rico (its affiliates and subsidiaries) at the Bankruptcy Court including, but

not limited, to mortgage notes, endorsements, deed of mortgage, perfection of the

security interest and certificate of indebtedness.

2. That upon a search and verification of the documents and records related to this case

kept at Banco Popular Puerto Rico, in the regular course of business, I attest under

penalty of perjury that the secured claim filed is guaranteed by a Mortgage Deed and a

Mortgage Note duly endorsed and payable to the order of to Banco Popular Puerto Rico.

3. That the original of said mortgage with is either at a banks vault for safekeeping or is

part of a pool of mortgages in which Banco Popular Puerto Rico acts as servicing agent

and thus, there is not a copy readily available to be submitted as part of this procedure.

IN TESTIMONY WHEREOF, I SIGN THESE document under penalty of perjury in San Juan, Puerto

Rico this 9<sup>th</sup> day of June, 2011.





## LORD TITLE SERVICE CO.

713 ANDALUCIA AVENUE PUERTO NUEVO SAN JUAN, PUERTO RICO 00920 WWW.LORDTITLE.COM PHONE: (787) 774-1660 FAX: (787) 782-5888 TSEARCH@LORDTITLE.COM

Notice:

CASE: CARDONA JIMENEZ LAW OFFICES

Lyridel

Bankruptcy #11-00735

RE: Jarminiam I. Batista

PROPERTY NUMBER: #10,093 recorded at page 50 of volume 210 of Rio Grande Property Registry of Carolina. Section 3<sup>rd</sup>.

**DESCRIPTION**: RUSTICA: Parcela marcada con el #119 en el plano de parcelación de la Comunidad Rural Montebello del Barrio Ciénaga Baja del término municipal de Río Grande, con una cabida superficial de 0.0762 cuerdas, equivalentes a 299.30 metros cuadrados. En lindes por el NORTE, con la calle #21 de la comunidad; por el SUR, con la Quebrada Angola; por el ESTE, con la parcela #118 de la comunidad; y por el OESTE, con la parcela #120 de la comunidad.

ORIGIN: Main Property #9,715 recorded at page 106 of volume 200 of Rio Grande

**FEE SIMPLE:** Title is vested in favor of **JARMIRIAM BATISTA RODRIGUEZ**, **single** who acquired for the purchase price of \$45,000.00 from Banco Popular de P.R., pursuant to Deed #244 executed in San Juan on December 27, 2006 before Notary Public Luis A. Arrufat Pimentel, recorded at page 42 of volume 510 of Rio Grande, property #10,093 and inscription 9<sup>th</sup>.

ENCUMBRANCES: By its origin: Right of Way

**BY ITSELF:** Mortgage constituted by Jarminiam Batista Rodríguez, single guaranteeing a note in favor of Autoridad para el Financiamiento de la Vivienda de P.R. and/or its assigns for the amount of \$71,540.00 at 6.5% interest yearly, due on April 1, 2037, constituted pursuant to Deed #267 executed in San Juan on December 27, 2006 before Notary Public María Elena Arroyo Rojas recorded at page 42 of volume 510 of Río Grande, property #10,093, Inscription 10<sup>th</sup>.

Mortgage constituted by Jarminiam Batista Rodríguez, single guaranteeing a note in favor of Autoridad para el Financiamiento de la Vivienda de P.R. and/or its assigns for the amount of \$3,606.00 no interest yearly, due on 6 years, constituted pursuant to Deed #268 executed in San Juan on December 27, 2006 before Notary Public Maria Elena Arroyo Rojas recorded at page 43 of volume 510 of Río Grande, property #10,093, Inscription 11<sup>th</sup>.

NOTE: Subject to the Conditions of "La Llave para tu Hogar" federal program.

NOTE: NEW INFORMATION SUBMITTED TO THE PROPERTY REGISTRY, MAY TAKE A FEW DAYS TO BE REFLECTED INTO THE AGORA ELECTRONIC SYSTEM. WE ARE NOT LIABLE FOR ERRORS AND / OR OMISSIONS CREATED BY THIS SITUATION.

Run for states attachments, including Law #12 of 2010 and federal attachments, judgments and Electronic Daily Log (Agora System).

March 28, 2011

1103-0178

NOEL A. HERNANDEZ GUZMAN PRESIDENT

3-b

#### PAGARE HIPOTECARIO .

\$71,540.00

San Juan, Puerto Rico. No. 82397-00

VENCIMIENTO: primero (1ro) de\_--ABRIL--- de dos mil treinta y siete (2037)

---Si cualesquiera de los plazos estipulados en este pagaré no fuera satisfecho antes del vencimiento del próximo plazo mensual, entonces la totalidad de esta obligación y sus intereses acumulados quedarán vencidos sin aviso alguno, a opción del tenedor de esta obligación, quien podrá exigir su pago. El no hacer uso de este derecho opcional no constituye renuncia para el ejercicio del mismo en caso de

---Se renuncia por la presente, los derechos de presentación, protesto, demanda, aviso y prescripción.

---Los otorgantes, los endosantes y los fiadores autorizan a cualquier abogado de Puerto Rico a comparecer en su representación ante los Tribunales de Justicia correspondiente, a la jurisdicción de cuyos Tribunales se someten para que al vencimiento de este pagaré se allane a que el correspondiente Tribunal dicte sentencia en contra de ellos por el principal de esta obligación o cualquier balance del mismo que adeude, los intereses que se deban Y UNA SUMA EQUIVALENTE AL DIEZ POR CIENTO (10%) DEL PRINCIPAL DE ESTE PAGARE para costas, gastos y honorarios de abogado.

---Este pagaré está garantizado con una hipoteca sobre propiedad inmueble según se expresa en la escritura número \_\_\_ 267 \_\_\_\_ de esta misma fecha otorgada ante mi el Notario que suscribe.

--- En San Juan, Puerto Rico, a \_\_ 27 --- de diciembre ----- de 2006

--- AFFIDÁVIT NUMERO: 516 .

IRIS BATISTA RODRIGUEZ

incumplimiento subsiguiente.

---Suscrito ante mí este pagaré por los arriba firmantes, de las circunstancias personales expresadas en la escritura antes reseñada y a quienes identifique según quedó expresado en la escritura de hipoteca mencionada.

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---El mismo dia y en el lugar de su otorgamiento expedí primera copia certificada a favor de LA AUTORIDAD PARA EL FINANCIAMIENTO DE LA VIVIENDA DE PUERTO RICO. Doy Fe. -----

NOTARIO PUBLICO

Jun 1



ESCRITURA NÚMERO: DOSCIENTOS SESENTA Y SIETE (267)
En la Ciudad de San Juan, Puerto Rico, a
veintisiete ( 27 ) de diciembre de dos mil
seis (2006)
ANTE MÍ
MARIA ELENA ARROYO ROJAS
Abogado(a) y Notario Público con ejercicio en el
Estado Libre Asociado de Puerto Rico con oficinas en
San Juan y vecindad en San Juan Puerto Rico
COMPARECEN
Las partes nombradas en los párrafos SEXTO Y SÉPTIMO
de esta escritura denominados de aquí en adelante
"Deudores Hipotecarios y "Acreedor Hipotecario", y
cuyas edades, profesiones, vecindades y estados civiles
aparecen en dichos párrafos SEXTO Y SÉPTIMO
Asegurenme los comparecientes hallarse en el pleno
goce de sus derechos civiles, sin que me conste nada en
contrario y teniendo a mi juicio capacidad legal
necesaria para este otorgamiento, libremente;
EXPONEN
PRIMERO: Que los Deudores Hipotecarios son dueños
de la propiedad o propiedades que se escriben en el
párrafo OCTAVO de esta escritura, la cual adquirió en
la forma descrita en párrafo NOVENO y cuyo estado de
cargas y gravámenes consta de dichos párrafos
SEGUNDO: Sigue manifestando los Deudores
Hipotecarios que han suscrito en esta misma fecha el
pagaré que se copia a continuación, pagadero a la orden
del "Acreedor Hipotecario",

DOCUMENT Pager RIPOTECARIO-----

\$71,540.00 San Juan, Puerto Rico. ---VENCIMIENTO: Primero (1ro) de abril de dos mil treinta y siete (2037) .-------POR VALOR RECIBIDO el(los) suscribiente(s), se obliga(n) a satisfacer a la AUTORIDAD PARA EL FINANCIAMIENTO DE LA VIVIENDA DE PUERTO RICO, o a su orden, la suma principal de SETENTA Y UN MIL QUINIENTOS CUARENTA DOLARES (\$71,540.00), con intereses desde esta fecha a razón del SEIS PUNTO CINCUENTA (6.50%) por ciento anual sobre el saldo impagado de esta obligación. Dicho principal e intereses serán pagaderos en la oficina del la Autoridad Para el Financiamiento de la Vivienda de Puerto Rico, en San Juan, Puerto Rico, o en cualquier otro sitio que el tenedor designe, por escrito, en plazos mensuales de CUATROCIENTOS CINCUENTA Y DOS DOLARES CON DIECIOCHO CENTAVOS (\$452.18), empezando el día primero (1ro) de mayo de dos mil siete (2007); y sucesivamente el día primero de cada mes subsiguiente hasta el pago total del principal e intereses, excepto que el plazo final de vencimiento para el pago total de esta deuda, si antes no ha sido satisfecho vencerá y será pagadero el día primero (1ro) de abril de dos mil treinta y siete (2037).--------Si cualesquiera de los plazos estipulados en este pagaré no fuera satisfecho antes del vencimiento del próximo plazo mensual, entonces la totalidad de esta obligación y sus intereses acumulados quedarán vencidos sin aviso alguno, a opción del tenedor de esta obligación, quien podrá exigir su pago. El no hacer uso de este derecho opcional no constituye renuncia para el ejercicio del mismo en caso de incumplimiento subsiguiente.-----

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---Se renuncia por la presente, los derechos de

Decumentantes dent Compa 4 si los Deudores Hipotecarios arrendaren o permitieren que otros le sustituyan en el uso de la propiedad hipotecada. -------------DECIMO SÉPTIMA---------EL DEUDOR HIPOTECARIO se compromete con el ACREEDOR HIPOTECARIO, a otorgar cualquier escritura, instrumento o documento público o privado adicional, o entregar a requerimiento de dicha parte cualquier documento adicional, que resultara necesario para poder inscribir esta transacción en el Registro de la Propiedad. Así mismo, y de ser necesario, las partes se comprometen a otorgar cualquier documento que sea necesario otorgar para hacer inscribible la presente escritura en el Registro de la Propiedad, sin costo alguno y/o sin la necesidad de compensar económicamente a las partes por otorgar estos documentos.--------sexto: de una parte: Jarmirian iris batista RODRIGUEZ mayor de edad, soltera, propietaria y vecina de Carolina, Puerto Rico; a quien identifico mediante: --Con licencia de Conducir, expedida por el Gobierno de Puerto Rico, con foto y firma. -----

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FINANCIAMIENTO DE LA VIVIENDA DE PUERTO RICO, Seguro Social Número 66-043-3752, una Corporación Pública con oficinas principales en San Juan, Puerto Rico, creada por la Ley Número Ciento Tres (103) de once (11) de agosto de dos mil uno (2001), representado en este acto por RAMON EUGENIO DIAZ RIVERA TAMBIEN CONOCIDO COMO RAMON DIAZ con número de Seguro Social 3", mayor de edad, soltero, ejecutivo y vecino de Toa Alta, Puerto Rico; facultades que acreditó el representante del compareciente mediante Resolución Número dos mil tres



mutamperuntiuma (2003-21) 4el dos (2) de septiembre de dos mil tres (2003) notarizado por la licenciada María de los Ángeles Trigo, bajo el testimonio número 1522 denominado esta escritura COMO "Acreedor Hipotecario" quien doy £е conocer ν personalmente. ---OCTAVO: Los Deudores Hipotecarios son dueños en pleno dominio de la siguiente propiedad:--------RUSTICA: Parcela marcada con el número Ciento Diecinueve (119) en el plao de parcelación de la COMUNIDAD RURAL MONTEBELLO del barrio Ciénaga Baja del término municipal de Rio Grande con una cabida superficial de cero punto cero setecientos sesenta y dos (0.0762) cuerdas, equivalentes a DOSCIENTOS NOVENTA Y NUEVE PUNTO TREINTA (299.30) METROS CUADRADOS. En lindes por el NORTE, con la calle número Veintiuno (21) de la comunidad; SUR, con la Quebrada Angola; ESTE, con la parcela número Ciento Dieciocho (118) de la comunidad; OESTE, con la parcela número Ciento Veinte (120) de la comunidad. --------Consta inscrita al folio cincuenta (50) del tomo doscientos diez (210) de Río Grande, finca número diez mil noventa y tres (10,093), Registro de la Propiedad de Carolina, Sección Tercera. --------NOVENA; Adquirieron los Deudores Hipotecarios la propiedad antes descrita por compra que de la misma hicieran, según consta de la escritura número \_\_\_ 244 \_\_\_ otorgada el veintisiete (27) \_\_\_\_\_ de diciembre de dos mil seis (2006), ante el (la) Notario LUIS A ARRUFAT"PIMENTEL -----DECIMO: Los Deudores Hipotecarios renuncian a favor de la AUTORIDAD PARA EL FINANCIAMIENTO DE LA VIVIENDA DE PUERTO RICO, el derecho de hogar seguro que tienen sobre la propiedad hipotecada, todo ello de acuerdo con lo dispuesto por la Ley Número treinta y uno (31) de quince (15) de junio de mil novecientos sesenta y cinco (1965).-

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---Tal es la escritura que aceptan los comparecientes, ratificándola en todas sus partes por hallarla conforme a sus instrucciones, procediendo yo, la Notario, a hacerles

--- Así lo dicen y otorgan ante mi los comparecientes, luego de haber leido la presente escritura, manifiestan quedar bien enterados de su contenido y se ratifican en el mismo, procediendo entonces a estampar sus firmas al final del documento y sus iniciales en todos y cada uno de los folios. --------DE TODO LO CUAL, y de lo demás que aseguro o refiero en este instrumento público, así como de haber identificado al(los) Deudor(es), según quedo expresado en el apartado SEXTO y de conocer personalmente al

dichos de la edad, estado civil, profesión y vecindad de los comparecientes, yo, el(la) Notario DOY FE y firmo, signo, sello y rubrico. -----

compareciente nombrado en el apartado SÉPTIMO, y por sus

Sayal Stl 24.

**EXHIBIT B** 

### IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF PUERTO RICO

IN THE MATTER OF:

JARMIRIAM IRIS BATISTA RODRIGUEZ

CASE NO. 11-00735 SEK

CHAPTER 13

**Debtor** 

### VERIFIED STATEMENT

I, José F. Cardona Jiménez of legal age, single, Attorney for Banco Popular Puerto Rico and resident of San Juan, Puerto Rico, declare under penalty of perjury as follows:

That as to this date May 31, 2011, by a search and review of the records kept by BPPR as Servicing agent of Banco de la Vivienda in the regular course of business in regard to debtor account with this bank there is no information that will lead the undersign to belief that debtor is a regular service member either on active duty or under a call to active duty, in the National Guard or as a Commission Officer of the Public Health Services or the National Oceanic and Atmospheric Administration (NOAA) in active duty.

The bank has not received any written notice from debtor that his military status has change as to this date.

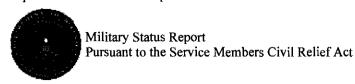
That as part of my search I examined the documents and records available to me within our computer system.

IN TESTIMONY WHEREOF I SIGN THESE PRESENTS under penalty of perjury, in San Juan, Puerto Rico this 31 th day of May, 2011.

J. L.

Department of Defense Manpower Data Center

May-31-2011 08:10:23



≺ Last Name	First/Middle	Begin Date	Active Duty Status	Active Duty End Date	Service Agency	
BATISTA		Based on the information you have furnished, the DMDC does not possess any information indicating the individual status.				

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard).

Mary Mr. Lacely-Dison

Mary M. Snavely-Dixon, Director Department of Defense - Manpower Data Center 1600 Wilson Blvd., Suite 400 Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Service Members Civil Relief Act (50 USC App. §§ 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "defenselink.mil" URL <a href="http://www.defenselink.mil/faq/pis/PC09SLDR.html">http://www.defenselink.mil/faq/pis/PC09SLDR.html</a>. If you have evidence the person is on active duty and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. §521(c).

If you obtain additional information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

This response reflects active duty status including date the individual was last on active duty, if it was within the preceding 367 days. For historical information, please contact the Service SCRA points-of-contact.

#### More information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d)(1) for a period of more than 30 consecutive days. In the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy TARs, Marine Corps ARs and Coast Guard RPAs. Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps) for a period of more than 30 consecutive days.

Coverage Under the SCRA is Broader in Some Cases

5/21/2011

Case:11-00735-SEK13 Doc#:36 Filed:06/10/11 Entered:06/10/11 13:11:29 Desc: Main Request for Military Status Document Page 14 of 14 Page 2 of 2 Vicky

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate.

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of SCRA extend beyond the last dates of active duty.

Those who would rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

WARNING: This certificate was provided based on a name and SSN provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided.

Report ID:BCEJKLM5SC